

In re David R. Cheriton, Application No. 09/981,125
Amendment A

REMARKS

The Office action dated September 7, 2005, and the references cited have been fully considered. In response, please enter the following amendments and consider the following remarks. Reconsideration and/or further prosecution of the application is respectfully requested. No new matter is added herein.

First, Applicant appreciates the Office returning the initialed, signed and dated 1449 indicating due consideration of the submitted references.

Next, Applicant appreciates the Office noticing the typographical error in claim 1, which has been corrected herein, and therefore Applicant requests the claim objection be withdrawn.

After entering of this amendment there are four pending claim sets corresponding to independent claims 1, 15, 22, and 23.

Independent claim 1 is amended herein to make the claim more readable as well as to incorporate limitations recited in one or more of dependent claims 2-5, 7, 12, and 14 canceled herein. Support for these amendments is provided in the original filed application, said dependent claims, FIG. 1A and its discussion on pages 11 and 12, as well as original claims 15 through 21 which recite multiple operating modes, as well as the description on pages 6-12 of the originally filed application. Claim 6 is amended to recite that there are two configurable filters with support provided as discussed *supra*, including, but not limited to, original claim 23. Claims 8, 9, 10, and 13 are amended to cleanup claim language to be consistent with current preferences and the wording of independent claim 1. Two new dependent claims of independent claim 1 are added herein. Claim 29 recites the limitation that the splitter is in the input interface such as that shown in FIG. 1A, and claim 30 recites that the redistribution of packets that were forwarded by a configurable filter are redistributed among at least two of the other filters, with support provided at least by the description on page 7, lines 20-22.

Independent claim 15 and its dependent claims 16-21 are not amended herein.

Independent claim 22 is amended herein in a manner similar to that described *supra* in relation to independent claim 1, as well as to clean up some claim language, such that claim 22

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recites that the filters are configured such that a particular packet will be forwarded by a single one of the filters and in a normal operating mode, each of the filters is configured for forwarding at least one packet. New dependent claims 31-33, directly corresponding to limitations recited in original dependent claims 16-18, are added to depend from independent claim 22.

Independent claim 23 and its dependent claims 24-27 are not amended herein, while claim 28 is canceled.

In regards to the § 102 rejections of independent claims 1, 15, 22, and 23 based on Merchant et al., US Patent 5,408,463, Applicant notes that these claims recite different limitations, and by the Office selectively presenting a rejection for independent claim 22, without addressing the different limitations of the other claims, the Office has failed to meet its initial burden for presenting a *prima facie* rejection for each claim and all of its claim limitations.

It is well-established law that the burden is on the Office to initially present a *prima facie* unpatentability (e.g., anticipation, obvious) rejection, before Applicant has any burden of proof of disproving any application of a cited reference against a claim. *In re Warner*, 379 F2d. 1011, 1016, 154 USPA 173, 177 (C.C.P.A. 1967); *Ex parte Skinner*, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986). The MPEP and law is clear that for anticipation, the reference *must teach each and every aspect of the claimed invention* either explicitly or impliedly, and the burden is on the Office to present a *prima facie* case of anticipation. MPEP § 706.02 (*emphasis added*). Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

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Original independent claim 15 recites "wherein when the first and the second configurable filters are in their respective normal operating states: a particular packet is forwarded only by one of the first and the second configurable filters and both the first and second configurable filters are configured to forward at least one packet," and original independent claim 23 recites "wherein a particular packet is forwarded only by one of the first and the second configurable filters and both the first and second configurable filters are configured to forward at least one packet." Applicant did not see a presentation in the Office action of a rejection for either of these limitations. Moreover, Applicant submits that Merchant et al. operates in a manner similar to that described in the background section of the present application and patentably different than recited in all pending claims. Merchant et al. operates in a full-redundancy capability where all packets are forwarded to both of switch modules 101 which when both are functioning properly operate exactly in the same manner, and selector 119 is simply used to select one of the outputs of a switching module 101. Merchant et al., col. 3, lines 25-37 and lines 56-60. Especially note that the cells are "dual fed" and these switch modules are redundant such that the "cell contents of the N queues in each of buffer memory and control units 126 and 127 of switch modules 101 and 102 respectively, should be identical."

For at least this reason, Merchant et al. neither teaches nor suggests (in fact teaches away from as its intended purpose is full redundancy) only forwarding a particular packet by only one of the configurable filters (rather both forward each packet). Moreover, independent claims 1 and 22 recite a similar limitation (thus all pending claims recite such a limitation), and the basis of the prior art rejections of all claims relies on Merchant et al. If the Examiner complied with MPEP § 706 and 37 CFR 1.104(c)(2), then the Examiner cited the best prior art references available. As the prior art of record neither teaches nor suggests all the claim limitations of the pending claims, then all pending claims are believed to be allowable over the best prior art available, and Applicant requests the claims be allowed and the application pass to issuance.

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Although Applicant has successfully traversed the rejections of all pending claims, Applicant will address a few other statements in the Office action.

First, the Office fails to present a *prima facie* case of a proper rejection of any claim as the Office relies on equating switch modules 101, 102 of Merchant et al. to the configurable filters recited in the claims. However, Merchant et al. teaches that its switch modules 101 and 102 are configured to always forward all packets - they do not filter packets. Rather, selector 119 of the transmit line interfaces filters the packets. Merchant et al., col. 3, lines 25-37 and lines 56-60. As such switch modules 101 and 102 do not forward a different identifiable set of packets as they receive and forward the same sets of packets. As such, switch modules 101, 102 do not have an all packet blocking state.

Next, in regards to the § 103 rejections, Applicant notes that the Office cites the wrong patent number for Pitcher et al., and Applicant has already traversed the rejections of the independent claims. Furthermore, Applicant respectfully traverses the combination presented in the Office action of Merchant et al. with Pitcher et al. First, such a combination does not make sense if one thinks about the semantics of the operation of Merchant et al., which is concerned with full redundancy and every packet is forwarded through multiple switch modules (101, 102) and when there is no error, selector 119 simply selects either of the paths (typically the primary path of switch module 101). Making selector 119 responsive to a value contained in a packet makes no sense as if both switch modules 101, 102 are functioning properly, then selector 119 selects either of them, and if one of them fails, selector 119 wants to select the correctly working switch module, not one based on a value contained in a packet, which would render Merchant et al. unsatisfactory for its intended purpose of redundancy. Thus, such a rejection conflicts with MPEP § 2143.01(V). Moreover, the motivation stated is non sequitur as the switch modules 101 102 of Merchant forward all packets to selector 119. Next, Applicant respectfully traverses the Official notice taken in regards to claim 11 of the use of an optical splitter as Applicant does not see how components 101 and 102 have the capability for receiving and processing an optical signal, and make a demand for evidence with the teachings for modifying Merchant et al. to

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render obvious the limitations of amended claim 11. Finally, load balancing performed such that switch modules 101 and 102 only process one-half the traffic would render Merchant et al. unsatisfactory for its intended purpose of redundancy, in conflict with MPEP § 2143.01(V), as discussed *infra*.

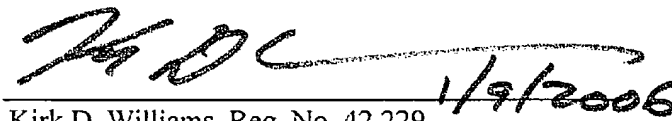
Final Remarks. Applicant hereby petitions/requests a one-month extension of time, with payment for such extension of time provided by the enclosed credit card payment form (PTO-2038). Should a different extension of time be deemed appropriate, Applicant hereby petitions for such deemed extension of time. Applicant further authorizes the charging of Deposit Account No. 501430 for any fees that may be due in connection with this paper (e.g., claim fees, extension of time fees).

In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, the application is considered in good and proper form for allowance, Applicant requests any and all rejections and/or objections be withdrawn, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicant is open to discussing, considering, and resolving issues in order to further prosecution.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By


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